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CTOS Data Systems Sdn Bhd v Suriati bt Mohd Yusof

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(NCvC)(W)-230–02 OF 2024
LEE SWEE SENG, AZIMAH OMAR AND AZMI ARIFFIN JJCA
9 AUGUST 2024

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Civil Procedure — Pleadings — Failure to plead — Respondent claimed that appellant provided inaccurate credit information about respondent which led to loss of reputation, personal losses and business losses — Respondent alleged that appellant breached statutory duty — Whether allegation pleaded

D

Tort — Defamation — Justification — Respondent sued appellant for defamation — Allegation that appellant provided inaccurate credit information about respondent which led to loss of reputation, personal losses and business losses — Whether High Court had allowed respondent's claim for defamation — Whether High Court had decided that claim for defamation was established — Whether credit information provided by appellant was true in substance and fact — Whether justification proven

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Tort — Negligence — Duty of care — Breach of duty — Respondent sued appellant for negligence — Allegation that appellant provided inaccurate credit information about respondent which led to loss of reputation, personal losses and business losses — Whether appellant as credit reporting agency owed duty of care to respondent as customer — Whether appellant breached duty of care — Whether credit information provided by appellant was accurate

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The respondent had filed a claim for negligence and defamation against the appellant. The claim was founded on the appellant's inaccurate credit information about the respondent concerning a debt due to a company known as Webe Digital Sdn Bhd ('Webe') leading to a loss of reputation, personal losses and business losses. The respondent had also alleged that the appellant had breached its statutory duty to the respondent and the respondent's creditworthiness had been affected by reason of the appellant giving her a low credit score resulting in her inability to obtain financing from financial institutions. Further, the respondent argued that the appellant had defamed her in the course of publishing inaccurate, incomplete, misleading and/or outdated credit information concerning the respondent to third parties. At the end of the trial, the learned High Court judge ('the HCJ') allowed the respondent's claim and awarded her general damages in the sum of RM200,000, interest at the rate of 5% and costs of RM50,000, hence, the

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present appeal ('encl 11') by the appellant. The respondent on the other hand filed a cross appeal ('encl 18') seeking that the decision of the HCJ be varied. It ought to be noted that in a separate action in the sessions court, the respondent had filed a claim against Webe and argued that she was not indebted to Webe, but at the end of the trial, the sessions court found that there was indeed a debt owed by the respondent to Webe.

Held, allowing encl 11, setting aside the order of the High Court and dismissing encl 18 with costs of RM65,000 here and below to the appellant subject to the allocator:

(1) It was plain and obvious that the HCJ did not state any reasons in his grounds to suggest that he had allowed the defamation claim and nor did he state that the claim for defamation was established. The judgment only centred around the claim of negligence and breach of fiduciary duties. Hence, there was no merit in the defamation claim raised by the respondent in the appeal. In addition, the respondent admitted that she had commenced an action against Webe in the sessions court in which she raised the contention that she was not indebted to Webe. However, the learned sessions court judge in his judgment was satisfied that the respondent had an outstanding debt to the appellant amounting to RM2,186. The respondent did not appeal against the sessions court judge's judgment, as such, the issue of indebtedness of the respondent to Webe was thus res judicata and could not be re-litigated. The law did not allow the respondent to have a second bite of the cherry. Further, it was trite that truth or justification was an absolute defence to an action in libel. Given that the trade reference was true in substance and in fact, the respondent's action for defamation could not stand at all (see paras 54, 56–57, 59 & 61–62).

(2) As the information of the respondent's indebtedness to Webe was correct, the court could not see how negligence had been proven. In the first place, based on the circumstances of the case, the court was of the view that the credit reporting agency did not owe a duty of care to the respondent as a customer as defined in the Credit Reporting Agencies Act 2010. Webe was a subscriber to the services of the appellant. The appellant provided a service where a subscriber may upload information of debts owed to the subscribers by third parties. This was broadly known as a trade reference which was reflected in Section E of the appellant's credit report. Webe was an internet service provider, and the respondent was its customer. Webe uploaded information of the respondent's indebtedness in the sum of RM2,186.60. Even assuming for a moment that there was a duty of care, there was still no breach of this duty as the information could not be said to be inaccurate, incomplete, misleading or irrelevant. It was Webe themselves who negotiated a settlement. Thus,

there was nothing inaccurate about the fact that the respondent indeed had defaulted on its payment obligations to Webe (see paras 64–66).

(3) As for the alleged breach of statutory duty, the court found that it had not been specifically pleaded by the respondent. Hence, the HCJ was not entitled to make any finding on such a claim. Even assuming that there was an implied reference to it, the court found that there was no breach of any statutory duty at all. There was also no connection proven between the rejection of the respondent's car loan application and the contents of the credit report. Furthermore, the respondent had also admitted in cross-examination that there was no evidence of any rejection by banks of facilities having been applied (see paras 67 & 70).

[Bahasa Malaysia summary

Responden telah memfailkan tuntutan kecuaian dan fitnah terhadap perayu. Tuntutan tersebut adalah berasaskan kepada maklumat kredit tentang responden yang tidak tepat yang dibekalkan oleh perayu berkenaan hutang yang responden terhutang kepada syarikat yang dikenali sebagai Webe Digital Sdn Bhd ('Webe') yang membawa kepada kehilangan reputasi, kerugian peribadi dan kerugian perniagaan. Responden juga telah mendakwa bahawa perayu telah melanggar kewajipan berkanunnya terhadap responden dan kepercayaan kredit responden telah terjejas oleh sebab perayu memberikannya skor kredit yang rendah menyebabkan dia tidak dapat mendapatkan pembiayaan daripada institusi-institusi kewangan. Selanjutnya, responden berhujah bahawa perayu telah memfitnahnya semasa menerbitkan maklumat kredit yang tidak tepat, tidak lengkap, mengelirukan dan/atau lapuk mengenai responden kepada pihak ketiga. Pada akhir perbicaraan, hakim Mahkamah Tinggi yang bijaksana ('HMT') membenarkan tuntutan responden dan memberikannya ganti rugi am dalam jumlah RM200,000, faedah pada kadar 5% dan kos sebanyak RM50,000, oleh itu, rayuan semasa ('lampiran 11') oleh perayu. Responden sebaliknya memfailkan rayuan balas ('lampiran 18') bagi memohon supaya keputusan HMT diubah. Perlu diingat bahawa dalam tindakan berasingan di mahkamah sesyen, responden telah memfailkan tuntutan terhadap Webe dan berhujah bahawa dia tidak berhutang dengan Webe, tetapi pada akhir perbicaraan, mahkamah sesyen mendapati bahawa sememangnya responden berhutang kepada Webe.

Diputuskan, membenarkan lampiran 11, mengenepikan perintah Mahkamah Tinggi dan menolak lampiran 18 dengan kos RM65,000 di sini dan ke bawah kepada perayu tertakluk kepada alokator:

(1) Jelas dan nyata bahawa HMT tidak menyatakan apa-apa alasan dalam alasannya untuk mencadangkan bahawa beliau telah membenarkan tuntutan fitnah tersebut dan beliau juga tidak menyatakan bahawa tuntutan fitnah tersebut telah dibuktikan. Penghakiman tersebut hanya tertumpu kepada tuntutan kecuaian dan pelanggaran kewajipan

fidusiari. Oleh itu, tiada merit dalam tuntutan fitnah yang dibangkitkan oleh responden dalam rayuan ini. Di samping itu, responden mengakui bahawa dia telah memulakan tindakan terhadap Webe di mahkamah sesyen di mana dia membangkitkan dakwaan bahawa dia tidak berhutang dengan Webe. Bagaimanapun, hakim mahkamah sesyen yang bijaksana dalam penghakimannya berpuas hati bahawa responden mempunyai hutang tertunggak kepada perayu berjumlah RM2,186. Responden tidak merayu terhadap penghakiman hakim mahkamah sesyen tersebut, oleh itu, isu keterhutangan responden kepada Webe adalah res judicata dan tidak boleh dibicarakan semula. Undang-undang tidak membenarkan responden untuk mendapatkan peluang kedua. Tambahan pula, sudah menjadi undang-undang yang mantap bahawa kebenaran atau justifikasi adalah pembelaan mutlak terhadap tindakan libel. Memandangkan 'trade reference' tersebut adalah benar dari segi inti patinya dan faktanya, tindakan fitnah oleh responden tidak dapat dipertahankan sama sekali (lihat perenggan 54, 56–57, 59 & 61–62).

(2) Memandangkan maklumat tentang keterhutangan responden terhadap Webe adalah betul, mahkamah tidak dapat melihat bagaimana kecuaian telah dibuktikan. Pertama sekali, berdasarkan keadaan kes, mahkamah berpendapat bahawa agensi pelaporan kredit tidak mempunyai kewajipan berjaga-jaga terhadap responden sebagai pelanggan seperti yang ditakrifkan dalam Akta Agensi Pelaporan Kredit 2010. Webe merupakan pelanggan kepada perkhidmatan perayu. Perayu menyediakan perkhidmatan di mana pelanggan boleh memuat naik maklumat hutang yang terhutang kepada pelanggan oleh pihak ketiga. Ini secara amnya dikenali sebagai 'trade reference' yang ditunjukkan dalam Bahagian E laporan kredit perayu. Webe ialah penyedia perkhidmatan internet, dan responden adalah pelanggannya. Webe memuat naik maklumat mengenai keterhutangan responden dalam jumlah RM2,186.60. Jikapun diandaikan bahawa terdapat kewajipan berjaga-jaga, masih tiada pelanggaran kewajipan ini kerana maklumat tersebut tidak boleh dikatakan tidak tepat, tidak lengkap, mengelirukan atau tidak relevan. Webe sendiri yang merundingkan penyelesaiannya. Oleh itu, tiada apa-apa yang tidak tepat tentang fakta bahawa responden sememangnya telah memungkiri kewajipan pembayarannya kepada Webe (lihat perenggan 64–66).

(3) Bagi dakwaan pelanggaran kewajipan berkanun, mahkamah mendapati ia tidak diplid secara khusus oleh responden. Oleh itu, HMT tidak berhak untuk membuat apa-apa dapatan mengenai tuntutan tersebut. Walaupun mengandaikan bahawa terdapat rujukan tersirat mengenainya, mahkamah mendapati bahawa tidak ada pelanggaran mana-mana kewajipan berkanun sama sekali. Juga tiada perkaitan yang dibuktikan antara penolakan permohonan pinjaman kereta responden dan kandungan laporan kredit tersebut. Tambahan pula, responden juga

telah mengakui dalam pemeriksaan balas bahawa tiada keterangan tentang apa-apa penolakan permohonan kemudahan kewangan oleh bank (lihat perenggan 67 & 70).]

Cases referred to

Hasnul bin Abdul Hadi v Bulat bin Mohamed & Anor [1978] 1 MLJ 75 (refd)
Joseph Paulus Lantip v Tnio Chee Chang and another appeal [2020] 5 MLJ 708; [2020] 4 CLJ 79, CA (refd)
Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors [1996] 1 MLJ 393, HC (refd)

Legislation referred to

Credit Reporting Agencies Act 2010 ss 2, 11(1), 29

Appeal from: *Suriati bt Mohd Yusof v CTOS Data Systems Sdn Bhd* [2024] MLJU 437 (High Court, Kuala Lumpur)

Malik Imtiaz Sarwar (with Ashok Kandiah, Celinne Teh and Khoo Suk Chyi) (Haris Ibrahim Kandiah Partnership) for the appellant.
Nizam Bashir bin Abdul Kariem Bashir (with Amer Ashrahaf bin Azuddin) (Nizam Bashir & Assoc) for the respondent.

Azmi Ariffin JCA:

THE SUIT

[1] On 29 January 2020, the respondent/plaintiff instituted a claim for negligence and defamation against the appellant/defendant in the High Court Kuala Lumpur.

[2] The respondent's suit was founded on the appellant's inaccurate credit information about respondent concerning a debt due to a company known as Webe Digital Sdn Bhd (Webe) (formerly known as Packet One Network Sdn Bhd) leading to a loss of reputation, personal losses as well as business losses.

[3] The respondent also alleged that the appellant had breached its duty of care to her in the course of collating, reporting and publishing credit information concerning her to the appellant's subscribers including financial institutions. Her creditworthiness amongst financial information had been affected by reason of the appellant giving her a low credit score resulting in her inability to obtain financing from financial institutions

[4] The respondent further alleged that appellant defamed her in the course of publishing inaccurate incomplete, misleading and/or outdated credit information concerning the respondent to third parties.

[5] The claim proceeded to a full trial with the respondent calling three witnesses and the appellant one witness.

[6] At the end of the trial, on 7 February 2024, the learned High Court judge allowed the respondent claim against the appellant and awarded the respondent general damages in the sum of RM200,000, interest at the rate of 5% and costs of RM50,000.

[7] Dissatisfied, on 8 February 2024, the appellant appealed to the Court of Appeal via encl 1.

[8] On 1 April 2024, the respondent filed a cross-appeal in encl 18 seeking that the decision of the High Court be varied to the extent that the following reliefs should be granted:

(a) an injunction that the appellant should obtain accurate and up-to-date credit information of the respondent from Bank Negara, Companies Commission of Malaysia, agencies and/or other sources of credit reporting;

(b) an injunction that the appellant should correct the respondent's credit report to reflect her true financial standing and credit worthiness;

(c) a declaration that the appellant had infringed the rights of the respondent as a subject of credit reporting when it failed to collect, report and disseminate accurate and up-to-date credit information of the respondent to third parties;

(d) general damages as the credit report of the respondent prepared by the appellant:

(i) was defamatory;

(ii) had been published in the appellant's credit report; and

(iii) had affected the financial reputation, dignity, goodwill and standing of the respondent and her business.

(e) general damages as the negligent misreporting and misrepresentation of the appellant had resulted in financial loss to the respondent and loss of opportunity to advance the respondent's business;

(f) general damages as the appellant's breach of duty of care had resulted in financial loss to the respondent that are foreseeable and not too remote; and

(g) aggravated and exemplary damages.

[9] For ease of reference, parties will be referred to as plaintiff and defendant as they were in the High Court.

THE PARTIES

[10] The plaintiff was at the material time the director and shareholder of Keranji Beach Resort Sdn Bhd situated in Pulau Perhentian, Terengganu Darul Iman and sole proprietor of Keranji Management which managed Keranji Beach Resort Sdn Bhd.

[11] The defendant is a company incorporated under the Credit Reporting Agencies Act 2010 ('2010 Act') tasked with collating credit reports from various sources including the Central Bank and other agencies for purposes of dissemination to subscribers.

THE PLAINTIFF'S CASE

[12] On 16 April 2009, the plaintiff signed-up for a P1 WIMAX Home Plus Plan Service with Webe for a period of 24-months. The Pl WIMAX Service is to be provided to the plaintiff's address at 24–2–3, Desa Villa Condo, Jalan Bukit Desa 3, Taman Desa, Off Jalan Klang Lama, 58100 Kuala Lumpur.

[13] The P1 WIMAX Service is a standard internet service package offered by Webe to various customers across the country. The terms and conditions of the Pl WIMAX Service are standard. They can be found online at Webe's official website (www.pl.com.my) and at the back of the Customer Registration Form signed by subscribers when they register for the service. In essence, the terms and conditions are, inter alia, as follows:

(a) the contract period of the P1 WIMAX Service is for 24 months;

(b) service shall continue automatically on a month-to-month basis after the end of the 24-months period;

(c) charges for the service shall be billed on a monthly basis;

(d) subscribers shall receive an email notification once a new bill is issued every month. Softcopy of the monthly bills can be accessed and viewed online;

(e) the subscriber is obliged to conduct a reasonable inquiry in the event he does not receive the bill within the expected period. Subscriber acknowledges that non-receipt of any statement of account, bill,

statement or any correspondence in relation to service subscribed shall not be a valid reason to withhold or delay any outstanding payments due to the defendant;

(f) notice of any disputes on the charges must be made within 30 days from the date of the bill, failing which the subscriber shall be deemed to have waived any disputes on the bill;

(g) in the event the subscriber defaults on the payment, the defendant shall be entitled to suspend the provision of service and charge interest at the rate of 1.5% per month (calculated at a daily basis) on the outstanding charges;

(h) webe is entitled to terminate the service in the event the service is suspended for a period of 60 days or longer; and

(i) in the event the subscriber wishes to terminate the service, he is required to execute a Service Termination Form and forward the same to Webe by hand, postal mail, email or fax. Webe must receive the Service Termination Form 30 days before the service termination date. The subscriber shall also remain liable to pay all fees, costs and charges due to Webe prior to the service termination date.

[14] Pursuant to the P1 WIMAX agreement, Webe duly activated the P1 WIMAX Service at the plaintiff's address in April 2009. The monthly charge for the service amounted to RM99 per month at that material time. The monthly charges under the P1 WIMAX agreement are low due to the fact that the contract period is for 24-months.

[15] On 21 January 2010, the plaintiff requested to upgrade the P1 WIMAX Service from the P1 WIMAX Home Plus Plan (24-months) to the P1 WIMAX Home Pro Plan (24-months). The monthly charges were therefore increased from RM99 per month to RM199.99 per month with effect from this date.

[16] The plaintiff refused to pay the outstanding charges, and thus Webe proceeded to terminate the P1 WIMAX Service on 31 August 2011. A total sum of RM2,186.60 was said to be remained unpaid as at the date of termination.

[17] Sometime in May 2019, the plaintiff attempted to apply for a loan for the purchase of a vehicle with a number of banks but all the application were rejected as the plaintiff's CTOS report showed that the plaintiff had a low credit score.

[18] On 8 May 2019, Mr Rashidie Saberee from Bank Muamalat (M) sent a photo containing a snapshot of the defendant's CTOS Report supposedly

showing that the plaintiff was indebted to Webe and the plaintiff has to get in touch with them to resolve the said issue.

[19] On 20 June 2019, one of the Debt Collection Agencies, ie Kudrat Partners & Co (M) Sdn Bhd contacted the plaintiff. During the telephone conversation, the plaintiff said that she had only use the P1 WlMAX Service for a period of two months. She also said that she had requested to terminate the PI WIMAX Service but the request was rejected by the Webe.

[20] Kudrat Partners & Co (M) Sdn Bhd contacted the plaintiff and proposed that the plaintiff pays a sum of RM1,093.30 representing a 50% reduction on the total outstanding sum, as full and final settlement of the debt owed to the Webe. The plaintiff refused and she was only willing to pay a sum of RM500.

[21] On 24 June 2019, plaintiff sent an email to the defendant on the issue of the 'trade reference' (for RM2,186.60) lodged by Webe. In that email, the plaintiff admitted subscribing to Webe's services and claimed that she had terminated its service a month after subscribing to the same.

[22] On 16 July 2019, the plaintiff visited TM Point MITC located at Jalan Wisma Negeri MITC, Menara TM Melaka, and requested for further reductions on the outstanding amount. However, her appeals fell on deaf ears.

[23] On 20 July 2019, the plaintiff obtained MyCTOS Report, being a self-check report from the defendant, which shows an inaccurate credit information lodged by Webe for an outstanding sum of RM2,186.60.

[24] On 10 September 2019, the plaintiff lodged a complaint with Malaysian Communications and Multimedia Commission that the total outstanding sum was unreasonable and that the defendant had been harassing her over the outstanding sums.

[25] On 16 October 2019, plaintiff had then disputed the alleged debt owed by her to Webe. After various objections by the plaintiff, on 17 October 2019, the plaintiff received a letter from Webe stating that the respondent's records have been removed from the CTOS' Trade Reference database without a need for the plaintiff to pay a single cent to Webe.

[26] On 18 October 2019, the plaintiff received a letter from Webe stating that her account with P1 'has been fully settled'.

[27] Subsequently, the plaintiff purchased a CTOS Score Report.

[28] On 1 November 2019, pursuant to a query from the plaintiff from the defendant as to the factors influencing the low credit score, the defendant via an email clarified that the defendant's score is calculated based on credit information from both CCRIS and CTOS database with the five categories below:

(a) payment history (35%) — whether you pay your loans on time or have missed payments in the past;

(b) amount owed (30%) — the number of credit facilities and the amount owed to the banks;

(c) credit history length (15%) — how long have you held a credit facility (credit card or a loan);

(d) credit mix (10%) — types of loan and credit cards you hold — secured home, car loans) vs unsecured credit (credit cards, personal loans); and

(e) new credit (10%) — have you been approved for new credit facilities recently.

[29] The plaintiff sent a notice of demand dated 28 November 2019 to the defendant stating that the defendant's conduct amounted to negligence, harassment and defamation.

[30] On 29 January 2020, the plaintiff filed a writ of summons against the defendant.

THE DEFENDANT'S CASE

[31] The plaintiff was well aware of the monthly charges as she had subscribed to the Webe's e-billing service. Monthly bills were sent via emails to her registered email address. The plaintiff was also duly notified of the monthly bills and outstanding charges via text messages (SMS) which were sent to her registered contact number. The plaintiff had also made payments from April 2009 to November 2010. However, not all the monthly bills issued were fully settled by the plaintiff.

[32] On 3 December 2010, Webe issued a notice to the plaintiff to inform that the P1 WlMAX Service would be suspended in the event she fails to settle the outstanding charges amounting to RM196.60. The notice of suspension was sent to the plaintiff's registered personal mobile number via SMS and also delivered to the plaintiff's registered email address via an Electronic Direct Mail ('EDM')

[33] The plaintiff however failed to settle the outstanding sum and the defendant proceeded to suspend the P1 WIMAX Service on 18 December

2020. The plaintiff was duly notified of the suspension of service via text message (SMS). As at the date of suspension, a total sum of RM395.60 remained due and outstanding.

[34] Following the suspension of service, Webe continued to bill for the monthly charges in accordance to the P1 WlMAX Agreement. The plaintiff was duly notified of these monthly bills via emails. Webe's internal collection team also attempted to reach out to the plaintiff in order to follow up on the outstanding charges, but these attempts were unsuccessful.

[35] As the plaintiff failed to pay the outstanding charges, Webe proceeded to terminate the P1 WIMAX Service on 31 August 2011. A total sum of RM2,186.60 remained unpaid as at the date of termination. Webe did not impose interests on the outstanding monthly charges despite the fact that it was entitled to do so under the Pl WlMAX Agreement.

[36] Webe subsequently assigned the plaintiff's account to several of its licensed and panel debt collection agencies to recover the outstanding charges. However, the plaintiff remained uncontactable.

[37] Given the plaintiff's persistent refusal to settle the outstanding sums, Webe had no alternative but to report the plaintiff's default to CTOS Data Systems Sdn Bhd (defendant) ie a private credit reporting agency on 20 June 2012. The plaintiff was duly notified about this by way of SMS and EDM at that material time.

[38] Subsequent attempts by the Debt Collection Agencies to contact the plaintiff were again unsuccessful.

[39] On 20 June 2019, one of the Debt Collection Agencies, ie Kudrat Partners & Co (M) Sdn Bhd managed to contact the plaintiff. During the telephone conversation, the plaintiff alleged that she had only use the P1 WIMAX Service for a period of two months. She also alleged that she had requested to terminate the P1 WIMAX Service but such request was rejected by Webe.

[40] The plaintiff's allegations were false as the records plainly show that the plaintiff had been using the P1 WIMAX Service from April 2009 up to the suspension of service in December 2010. The records also show that the plaintiff had never requested for the termination of the P1 WIMAX Service, as alleged.

[41] On 21 June 2019, Kudrat Partners & Co (M) Sdn Bhd contacted the plaintiff again and proposed that the plaintiff pays a sum of RM1,093.30, representing a 50% reduction on the total outstanding sum, as full and final settlement of the debt owed to Webe. The plaintiff refused as she was only willing to pay a sum of RM500. Kudrat Partners & Co (M) Sdn Bhd was not able to contact the plaintiff thereafter.

[42] On 16 July 2019, plaintiff visited TM Point MITC located at Jalan Wisma Negeri MITC, Menara TM Melaka, and requested for further reductions on the outstanding amount. Webe's representative however offered the same settlement proposal of RM500 and the plaintiff refused to pay the proposed sum.

[43] On 10 September 2019, the plaintiff lodged a complaint with Malaysian Communications and Multimedia Commission alleging that the total outstanding sum is unreasonable and that the defendant had been harassing her over the outstanding sums.

[44] As a gesture of goodwill and in an attempt to resolve the matter without any further delay, Webe agreed to reduce the total outstanding sum to RM445.60. This sum comprises of: (a) the outstanding monthly charges incurred prior to suspension of service at RM395.60; and (b) administrative fees of reporting the matter to defendant amounting to RM50. Webe agreed to waive all monthly charges incurred subsequent to the suspension of service. Despite this, the plaintiff refused to make payments.

[45] On 14 October 2019, the defendant received a police report dated 13 October 2019 lodged by the plaintiff on this matter.

[46] As a gesture of goodwill and part of its commitment to improve consumer relations, Webe agreed to waive all outstanding sums due and owed by the plaintiff. The defendant then proceeded to remove the plaintiff's records from CTOS's records. The plaintiff was duly notified of this by way of a letter dated 17 October 2019 and an email dated 18 October 2019.

[47] In December 2019, defendant received the plaintiff's notice of demand dated 28 November 2019 which alleged, inter alia, that the defendant's conduct amounted to negligence, harassment and defamation.

[48] The defendant strictly denied the allegations contained in the notice of demand.

[49] The plaintiff did not plead breach of statutory duties as cause of action in the statement of claim. The plaintiff conceded that this was not within her pleaded claim.

[50] The defendant had no knowledge of the plaintiff's alleged application for credit facilities from financial institutions on or about May 2019.

[51] Further and/or in the alternative, any credit report furnished and/or released by the defendant to its subscribers are only furnished with the consent of the plaintiff with the following specific disclaimer:

> This report may not be reproduced in whole or in part or in any form or manner whatsoever. This report is provided to the client in strict confidence for use by the client as one factor in connection with credit or other business decisions. The report contains information compiled from data sources which CTOS does not control and which may not have been verified unless otherwise stated in this report. CTOS therefore cannot accept responsibility for the accuracy, completeness or timelines of the contents of the report. CTOS disclaims any liability for any loss or damage arising out of or in any manner related to the contents of the report. Consent from the individual is required before retrieval of the report.

The relevant provisions of law

(a) s 2 of the Credit Reporting Agencies Act 2010 defines 'credit reporting business' as:

> 'a business that involves the processing of credit information for the purpose of providing a credit report to another person, whether for profit, reward or otherwise, but shall not include the processing of credit information —
>
> (a) for the purpose of discharging regulatory functions or that is required or authorized by or under any law; or
>
> (b) by a credit rating agency'

(b) s 2 of the Credit Reporting Agencies Act 2010 defines 'credit information' as:

> any information of a customer collected by a credit provider in the course of or in connection with the providing of credit, or any record or information of a customer processed in the course of or in connection with the carrying on of a credit reporting business, and may include information as listed in the First Schedule.

(c) s 2 of the Credit Reporting Agencies Act 2010 defines 'processing' as:

> in relation to credit information, means collecting, recording, holding or storing the credit information or carrying out any operation or set of operations on the credit information, including:
>
> (a) the organization, adaptation or alteration of credit information;

(b) the retrieval, consultation or use of credit information;

(c) the disclosure of credit information by transmission, transfer, dissemination or otherwise making available; or

(d) the alignment, combination, correction, erasure or destruction of credit information;

(d) s 2 of the Credit Reporting Agencies Act 2010 defines 'credit report' as:

any record or information, whether in a written, oral or other form, that —

(a) has any bearing on a customer's —

(i) eligibility to be provided with credit:

(ii) history in relation to credit: or

(iii) capacity to repay credit; and

(b) is used, has been used or is capable of being used as one of the factors in establishing a customer 's eligibility for credit.

(e) s 11(1) of the Credit Reporting Agencies Act 2010 provides:

No person shall carry on a credit reporting business unless:

(a) it is a company; and

(b) it has been registered as a credit reporting agency and been issued a certificate of registration by the Registrar under subsection 14(5).

(f) s 29 Credit Reporting Agencies Act 2010 provides as follows:

(1) A credit reporting agency shall not use or further process any credit information without taking such steps as are in the circumstances reasonable to ensure that the credit information is accurate, up-to-date, complete, relevant and not misleading.

(2) A credit reporting agency shall, when undertaking a comparison of credit information within its control with any other credit information for the purpose of producing or verifying information about an identifiable customer, take such measures as are reasonably practicable to avoid the incorrect matching of the credit information.

(3) Without limiting the generality of subsection (1), a credit reporting agency shall —

(a) establish and maintain controls to ensure that, as far as is reasonably practicable, only credit information that is accurate, up-to-date, complete, relevant and not misleading is used or further processed;

(b) monitor credit information to ensure that it is accurate, up-to-date, complete, relevant and not misleading; and

(c) conduct regular checks on compliance with the controls.

SUMMARY OF THE HIGH COURT FINDINGS

[52] The learned High Court judge in his judgment held among others as follows:

(a) business of credit reporting:

From the provision of the 2010 Act, defendant's main role is to collect, record, hold, and store the information received. In short, the defendant plays a dual role of collecting information and processing that information

The defendant is also empowered to disseminate the information to its subscribers and this included financial institutions. In this case, the defendant had a right to disseminate the credit information to the Small Medium Enterprise Development Bank Malaysia Sdn Bhd.

(b) accuracy of credit report:

Section 29 of the 2010 Act imposes a duty upon the credit rating agency to verify and to ensure the accuracy of the credit report.

The court rules that the defendant's contention that the recipient of the information has a duty to independently verify the credit information was unfounded and unsubstantiated.

Further, the 2010 Act was enacted to empower the credit agencies like the defendant to provide accurate credit information to facilitate financial agencies in approving and disbursing any financial aid to an applicant. An accurate information provided by the defendant was vital in the decision making of the financial institutions. The defendant therefore had a duty to of care to provide accurate credit information not only to the financial institutions but also to persons concerned against whom the information was related to.

In short, the court ruled that the defendant owed a duty of care towards the plaintiff in providing accurate credit information.

(c) breach of duty:

The plaintiff had led evidence that the defendant was alerted that the information against her was inaccurate. The evidence shows that the defendant chose to ignore the communication from the plaintiff and continued to maintain the said information. In the court's view the least the defendant could have done was to either suspend the information awaiting verification or notify the subscribers or applicants that the information was being verified.

By choosing to be indifferent even after being alerted by the plaintiff, the defendant has clearly breached the duty of care owed towards the plaintiff.

(d) credit score:

The defendant apart from giving out the credit information had also formulated a credit score based on certain criteria. The criteria include payment history, amount owed, credit history length, credit mix and new credit. The criteria comes with their respective percentages which when added up, classifies the status of a person. In this case, upon an analysis of the above criteria the plaintiff has been classified as a serious delinquent.

In the court's view there is no provision in the 2010 Act empowering the defendant to formulate a credit score or empowering the defendant to create its own criteria or percentage to formulate a credit score. The defendant was just supposed to be a repository of the credit information to which the subscribers have access to.

By formulating a credit score, the defendant has gone beyond its statutory functions and the plaintiff has suffered a loss as a result of being labelled as a delinquent by the defendant when the defendant had no right to do so.

(e) damages:

The court finds that the defendant has breached the duty of care owed to the plaintiff and that the defendant had overstepped the functions they were registered for.

In the court's view although the plaintiff had suffered losses, the plaintiff could only prove personal losses but not business losses. The plaintiff is therefore entitled to be compensated only for her personal losses.

The plaintiff's reputation as well as her relationship with her husband had broken down as a result of the defendant's negligence and breach of fiduciary duties.

For this loss suffered, the court allowed the plaintiff's claim and awarded a sum of RM200,000 as general damages. The court also awarded costs of RM50,000 to the plaintiff.

Memorandum of appeal:

(1) The learned Judge erred in fact and/or law in allowing the Respondent's claim with costs, and awarding a sum of RM200,000 as general damages.

(2) The learned Judge failed to give due consideration to the pleaded case of the Respondent, and to hold her to her case as pleaded.

2.1. The Respondent's claim was based on the causes of action of negligence and defamation.

2.2. In respect of the claim for negligence:

(a) The Respondent's claim was essentially that the Appellant had failed to exercise due care in ensuring that credit information concerning the Respondent was not accurate and up to date, and for failing to have taken steps to correct such information despite being notified of inaccuracies; and;

(b) It was not the Respondent's pleaded case that the Appellant was not empowered to 'formulate a credit score' or to 'create its own criteria or percentage to formulate a credit score' and that by having formulated a credit score the Appellant had caused the Respondent to suffer a loss.

2.3. The Respondent did not plead a claim for breach of fiduciary duties, nor did she allege that the Appellant owed fiduciary duties to her.

2.4. Notwithstanding, the learned Judge concluded that:

(a) The Appellant was not empowered to 'formulate a credit score' or to 'create its own criteria or percentage to formulate a credit score' and that by having formulated a credit score the Appellant had caused the Respondent to suffer a loss; and

(b) The Appellant had breached fiduciary duties it owed to the Respondent.

2.5. The learned Judge's findings on these matters were arrived at in breach of natural justice and the learned Judge had thereby occasioned a serious miscarriage of justice.

(a) The said matters were not pleaded and ought to have been disregarded.

(b) Further, the Appellant had not in any other way been put on notice of the need for it to justify its conduct in providing credit scores as part of its credit reporting services. The learned Judge did not notify the Appellant of his intention to take this subject into consideration.

(c) Had the Appellant been put on notice of the same, the Appellant could have, and would have, been in a position to justify it doing so having regard to the regulatory framework applicable to the credit reporting businesses and its dealings with the Registrar of Credit Reporting Agencies (the 'Registrar').

(d) The Appellant was denied the right to be heard and was thus denied its right to fair trial and due process as guaranteed under Articles 5(1) and 8(1) of the Federal Constitution.

(3) The learned Judge erred in fact and/or law in concluding that the Appellant was not empowered to 'formulate a credit score' or to 'create its own criteria or percentage to formulate a credit score' and that by having formulated a credit score the Appellant had caused the Respondent to suffer a loss.

3.1. The learned Judge failed to properly appreciate that the Appellant is not a statutory body.

3.2. The learned Judge failed to give due consideration to the provisions of the Credit Reporting Agencies Act 2010 (the 'Act').

(a) Credit reporting business are required to be registered under that statute, failing which they are not prohibited from operating as such. The Appellant is duly registered, having periodically renewed its certificate of registration in the manner required, a process which requires the Appellant to provide such information as is required to the Registrar, including the manner in which it conducts its credit reporting business.

(b) The said statute does not prohibit the formulation of credit scores and, conversely, contemplates the provision of such as part of credit reporting. The Registrar has at all times been aware of the Appellant providing such credit scores.

(c) Contraventions of the Act or the relevant codes of practice are to be made the subject of complaints to the Registrar who is empowered to conduct investigation in the manner provided.

(i) The Registrar is empowered to issue enforcement notices requiring the taking of measures to address any such contravention.

(ii) In that regard, the Respondent had at no point in time made a complaint about the matters put in issue in her claim against the Appellant.

(iii) The learned Judge had thus usurped the functions of the Registrar in concluding that the Appellant was acting in a manner that it was not empowered to by the Act.

The learned Judge erred in fact and/or law in concluding that the Appellant had breached its duty of care to the Respondent in all the circumstances.

4.1. The Appellant did not as a matter of law owe a duty of care to the Respondent in respect of the credit reporting services it provided to its subscribers.

4.2. Further, or in any event, the Respondent was not entitled in law to seek damages for reputational loss, or for loss suffered as a consequence of reputational loss, by way of a claim for negligence.

(a) Such loss can only be recovered by way of a claim for defamation.

(b) The learned Judge had not allowed the Respondent's claim for defamation.

4.3. There was no factual foundation for any finding that the Appellant had inaccurately represented the financial standing or creditworthiness of the Respondent, or that the Respondent had suffered any injury as a consequence of the acts of the Appellant that she complained of.

The learned Judge erred in fact and/or law in awarding general damages in the amount of RM200,000.

5.1. There was no basis in law for such an award. The learned Judge did not find that the Respondent had succeeded in her claim for defamation.

5.2. In any event, the Respondent did not establish that she had suffered a loss of RM200,000 as consequence of the purported negligence of the Appellant. The learned Judge had failed to adhere to the principles of law applicable to assessing damages in such claims.

MAIN ISSUES FOR DETERMINATION

(a) whether the learned High Court judge had erred in fact and/or law in allowing the plaintiff's claim with costs and awarding a sum of RM200,000 as general damages;

(b) whether the learned High Court judge failed to give due consideration to the pleaded case of the plaintiff and to hold her to her case as pleaded ie premised on negligence and defamation;

(c) whether the learned High Court judge had erred in fact and/or law in concluding that the defendant was not empowered to 'formulate a credit score' or to 'create its own criteria or percentage to formulate a credit score' and that by having formulate a credit score the defendant had caused the plaintiff to suffer a loss;

(d) whether the learned High Court judge had erred in fact and/or law in concluding that the defendant had breached its duty of care to the plaintiff in all circumstances; and

(e) whether the learned High Court judge had erred in law and in fact when His Lordship did not consider the plaintiff's other claims for an injunction, declaration, damages for mental distress and/or aggravated damages and punitive and/or exemplary damages as well as interest (which ought to be claimed from the date of the filing of the writ ie 29 January 2020 till date of full settlement) based on applicable principles.

ANALYSIS AND FINDINGS

[53] After perusing the learned High Court judge's grounds of judgment, the notes of proceedings and the submissions made, we unanimously allowed the defendant's appeal. We now give our reasons.

The defamation claim

[54] First, we will deal with the issue of defamation. It does not appear in the grounds of judgment that the High Court had granted damages based on defamation but rather on negligence and breach of statutory duty. It is pertinent to emphasise that the plaintiff admitted that she had commenced an action against Webe in Kuala Lumpur Sessions Court Civil Suit No WA-B53-2–01 of 2020 in which she raised the contention that she was not indebted to Webe.

[55] It is the plaintiff's pleaded case that the plaintiff was not indebted in the amount of RM2,186 to Webe. Contrary to the pleaded case, the plaintiff repeatedly admitted during cross-examination that the she was in fact indebted to Webe:

(See p 56 encl 4 Volume B of the Record of Appeal):

SP1: Saya ada tunggakan.

MAH: *Ada tunggakan.*

PD: Kamu ada tunggakan. Maknanya dalam erti kata lain, kamu memang pada masa itu berhutang kepada siapa nama ni, Packet One Network Sdn Bhd pada masa itu, betul? A

SP1: Bukan pada masa itu, 11 tahun yang lalu.

PD: Yes. Tetapi pada masa itu, tunggakan itu masih tidak dibayar. Ya atau tidak? B

SP1: Belum dibayar. Pernah cuba dibayar.

(See p 62 encl 4 Volume B of the Record of Appeal):

PD: Betul, okay. Now, PD adalah peguam Defendan iaitu peguam WEBE. Dalam surat ini subjek surat adalah berhubung dengan rayuan untuk mengurangkan bayaran tunggakan, betul. Puan setuju dengan saya bahawa surat rayuan ini Puan tidak menyatakan bahawa Puan pernah memohon untuk menamatkan kontrak perkhidmatan Pl WIMAX dalam surat ya. Now, sekarang kita nampak muka surat 35 okay. Puan bersetuju dengan saya berdasarkan surat ini Puan mengaku bahawa Puan memang ada berhutang kepada, dengar baik-baik ya, pihak Defendan, okay. Now, pihak Defendan yang dirujuk di sini adalah WEBE, betul? C D

SP1: Betul

(See pp 62–63 encl 4 Volume B of the Record of Appeal): E

PD: Tidak bersetuju, okay fine. So kalau tidak bersetuju, saya akan berikan peluang sekarang as supposed to becoming out re-examination. Sila beritahu Yang Arif kenapa kamu tidak bersetuju itu tidak bercanggah memandangkan jawapan berada di atas rekod.

SP1: Okay. Saya telah menggunakan perkhidmatan Pl pada tahun 2009. Dan saya ada hutang tertunggak lebih kurang 2 hingga 300 ringgit. Tapi pada tahun 2019 setelah saya membuat loan bank dan saya tidak pernah ada rekod dalam CTOS. Tiba-tiba pada tahun 2019 hutang tersebut telah appear dalam CTOS report saya. F

(See p 63 encl 4 Volume B of the Record of Appeal): G

SP1: Saya keliru kerana WEBE mengambilalih P1 tanpa pengetahuan saya.

MAH: Okay kalau keliru, so sekarang apa jawapan kamu sekarang tak keliru lagi, apa jawapan kamu?

SP1: Saya ada berhutang dengan P1. H

(See pp 99–100 encl 4 Volume B of the Record of Appeal):

PP: Okay. Kamu menyatakan selepas itu pihak Defendan ada tanya kamu juga adakah kamu mempunyai tunggakkan kepada WEBE dan kamu menyatakan belum bayar, cuba bayar, okay. Soalan saya, mengapa kamu menyatakan kamu belum bayar atau cuba bayar? I

SP1: Saya mempunyai tunggakan dengan P1 dan saya tidak pernah cuba lari daripada hutang tersebut. Saya seorang yang bertanggungjawab terhadap hutang saya tetapi adalah amat mengelirukan ketika WEBE mengambil alih dan

kemudiannya saya terpaksa berurusan dengan Telekom dan dengan campur tangan pemungut hutang yang terus menerus menekan saya. Saya telah juga menghubungi CTOS, saya menghubungi WEBE dan saya menghubungi MCMC tetapi semasa menghubungi MCMC, MCMC meminta saya membayar jumlah yang dinyatakan oleh WEBE. Saya menghubungi CTOS, CTOS menyatakan untuk membayar jumlah yang ditetapkan oleh WEBE. So, bantahan demi bantahan, saya berbalik kepada benda yang sama, saya perlu mendapatkan penyelesaian dengan WEBE.

[56] Moving on, the learned sessions court judge in his judgment in paras 43–50 on pp 122–124 of encl 7 Vol 3 of the record of appeal stated that:

[43] Mahkamah berpuashati bahawa plaintif ada hutang yang tertunggak kepada defendan sebanyak RM2186.60. Terdapat keterangan yang kukuh mengenai perkara ini.

[44] Mahkamah berpuas hati bahawa defendan ada mengemukakan 28 invois bulanan bertarikh 28 April 2009 hingga 28 Ogos 2011 kepada mahkamah. Lihat pada muka surat 65 hingga 209 IDB.

[45] Mahkamah mendapati bahawa invois bertarikh 28 Ogos 2011 mencatatkan baki tertunggak ialah RM2186.60. Lihat invois pada muka surat 205 IDB seperti yang berikut:

Previous balance: RM1,987.60 Over Due

Current Bill: RM199.00 Due On (19 September 2011)

Rounding Adjustment: 0.00

Total Balance: RM2,186.60.'

[46] Jumlah hutang ini juga disahkan oleh SD1 dalam mahkamah. Tiada alasan untuk Mahkamah tidak mempercayai SD1. Dia adalah seorang eksekutif kanan dan bertanggungjawab terhadap akaun defendan.

[47] Mengenai cara pengiraan, SD1 menyatakan dalam pernyataan saksinya seperti berikut:

Q: Can you explain how did WEBE arrive at the sum of RM2,186.60?

A: The outstanding sum of RM 2,186.60 comprises solely of the Monthly Charges chargeable under the terms of the P1 WIMAX Agreement. The original duration of the P1 WIMAX Agreement is for a period of 24 months (April 2009 to April 2011). The Plaintiff is obliged to pay for the Monthly Charges chargeable during this period. Following the expiry of the initial contract period, the P1 WIMAX Service shall continue on a monthly basis, in accordance with. Clause 6.4 of the P1 WIMAX Agreement. The sum of RM2,186.60 represents the total outstanding Monthly Charges due and owing for the period between April 2009 and August 2011. It is important to emphasize that WEBE did not impose any interests on the outstanding Monthly Charges even though it was clearly entitled to do so under the P1 WIMAX Agreement.

[48] Plaintif juga mengaku defendan berhak mengenakan caj sehingga 24 bulan.

Dalam pemeriksaan balas, plaintif menyatakan:

> S: Saya juga rujuk Puan kepada soalan dan jawapan 18 penyata saksi. Saya mencadangkan kepada Puan, bahawa pihak Defendan adalah berhak caj Puan bayaran bulanan sehingga Ogos 2011 kerana kontrak Puan menyatakan bahawa kontrak perkhidmatan akan berterusan secara automatic selepas tempoh 24 bulan, Puan setuju?
>
> J: Selepas tempoh 24 bulan?
>
> S: Okay, tempoh perjanjian kontrak adalah 24 bulan?
>
> J: Ya.
>
> S: Dari April 2009 hingga April 2011.
>
> J: Ya.
>
> S: Puan bersetuju dengan saya bahawa berdasarkan kontrak perkhidmatan P1 WIMAX ini, kontrak perkhidmatan akan berterusan secara automatic setiap bulan sehingga ia ditamatkan, Puan setuju?
>
> J: Sehingga?
>
> S: Kontrak perkhidmatan adalah 24 bulan.
>
> J: Ya.
>
> [49] Rayuan demi rayuan yang dibuat olehnya juga menunjukkan bahawa dia mengaku ada hutang tertunggak. Dia cuma mahu membayar RM500 sahaja. Ini jelas menunjukkan bahawa plaintif ada hutang tertunggak.
>
> [50] Atas alasan-alasan di atas, mahkamah berpuas hati bahawa plaintif ada hutang dengan defendan dan terma-terma kontrak seperti yang dipersetujui oleh kedua-dua pihak adalah terpakai.

[57] It is trite that truth or justification is an absolute defence to an action in libel. In the case of *Hasnul bin Abdul Hadi v Bulat bin Mohamed & Anor* [1978] 1 MLJ 75 wherein the High Court held that:

> It is a complete defence to an action of libel or slander that the defamatory imputation is true. Such a defence is called a plea of justification (see para 351 of Gatley). To establish it the defendant must prove that the defamatory imputation is true (see para 352 of Gatley).

[58] Similarly, Richard Malanjum J (as he then was), in *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393 held as follows:

> In a defamation action, the defence of justification is a complete defence if it succeeds. And the question of malice or bad faith does not arise. But in order to succeed in the defence of justification a defendant must establish the truth of all the material statement in the words complained of which may include defamatory comments made therein. And in order to justify such comments, it is necessary to

show that the comments are the correct imputations or conclusions to be drawn from the proved facts. However, the plea of justification does not fail 'by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges' (see s 8 of the Defamation Act 1957 *and Abdul Rahman Talib v Seenivasagam & Anor* [1966] 2 MLJ 66). It is also to be noted that partial justification may be useful in the mitigation of damages.

[59] The sessions court judge's judgment in the defamation suit was not appealed against and so the issue of indebtedness of the plaintiff to Webe is thus res judicata and cannot be re-litigated. The law does not allow the plaintiff to have a second bite of the cherry.

[60] Based on the foregoing reasons, with greatest respect, we find no basis in law or fact for the learned High Court judge to allow the defamation claim. The plaintiff seems to have assumed that this claim was allowed. Though evidence was led in the High Court, the learned High Court judge had not addressed this issue in his grounds of judgment at all.

[61] Having perused through the judgment of the learned High Court judge, it was plain and obvious that the learned High Court judge did not state any reasons in his grounds to suggest that he had allowed the defamation claim and nor did he state that the claim for defamation was established. The judgment only centred around the claim for negligence and breach of fiduciary duties.

[62] Hence, we see no merit on the defamation claim raised by the plaintiff in the appeal. Given that the trade reference was true in substance and in fact, the plaintiff's action for defamation cannot stand at all.

THE NEGLIGENCE CLAIM

[63] We next move to the claim for negligence. In the present case, the plaintiff had also pleaded negligence as a cause of action allegedly resulting in damage to her reputation and creditworthiness.

[64] As the information of the plaintiff's indebtedness to Webe was correct, we cannot see how negligence had been proven. In the first place, based on the circumstances of this case, to our mind the Credit Reporting Agency does not owe a duty of care to the plaintiff as a customer as defined in the Credit Reporting Agencies Act 2010.

[65] Webe is a subscriber to the services of defendant. The defendant provides a service where a subscriber may upload information of debts owed to

the subscribers by 3rd parties. This is broadly known as broadly as trade reference which is reflected in Section E of the defendant's credit report. Webe is an internet service provider and the plaintiff was its customer. Webe uploaded information of the plaintiff's indebtedness's in the sum of RM2,186.60.

[66] Even assuming for a moment that there was a duty of care, there was still no breach of this duty as the information cannot be said to be inaccurate, incomplete, misleading or irrelevant. It was Webe themselves who negotiated a settlement. Thus, there was nothing inaccurate about the fact that the plaintiff indeed had defaulted on its payment obligations to Webe.

THE CLAIM OF BREACH OF STATUTORY DUTY

[67] As for the alleged breach of statutory duty, we find that it had not been specifically pleaded by the plaintiff. Hence, the learned High Court judge was not entitled to make any finding on such a claim. To fortify this finding, the Court of Appeal speaking through Mary Lim JCA (as Her Ladyship then was) in the case of *Joseph Paulus Lantip v Tnio Chee Chang and another appeal* [2020] 5 MLJ 708; [2020] 4 CLJ 79 held as follows:

> [28] The role played by pleadings cannot be overstated. It is a fundamental principle of fair play which extends to the court that all parties are bound by their pleadings. It would be most damaging to our administration and system of justice if parties are allowed to plead a certain complaint, lead evidence on another and the court decides on something entirely different. The Federal Court recently reminded and expressed the following view on the importance pf proper pleadings in *Iftikar Ahmed Khan v Perwira Affin Bank Bhd* [2018] 2 MLJ 292; [2018] 1 CLJ 415:
>
> > [29] It is settled law that parties are bound by their pleadings and are not allowed to adduce facts and issues which they have not pleaded: *Samuel Naik Siang Ting v Public Bank* ... In *Lee Ah Chor v Southern Bank Bhd* [2015] 6 MLJ 1; [1991] 1 CLJ 667; [1991] 1 CLJ Rep 239 it was held that where a vital issue was not raised in the pleadings, it could not be allowed to be granted and to succeed on appeal. A decision based on an issue which was not raised bv the parties in their pleadings is liable to be set aside: ... In *The Chartered Bank v Yong Chan* [1990] 1 MLJ 157; [1990] 1 CLJ 1113; [1990] 1 CLJ Rep 330, the Federal Court set aside the judgment of the trial judge as it was decided on an issue not raised on the pleadings. In that case, the trial judge erred in concluding that the pleadings included a claim for breach of contract as well as a claim for libel.

[68] Here, the injury complained of was as pleaded in para 24 plaintiff's statement of claim (which is reproduced herein):

> 24. Bermula pada bulan Mac 2019, Plaintif telah mendapat tawaran untuk permohonan satu skim pinjaman daripada SME Bank berjumlah RM1,000,000 (Ringgit Malaysia Satu Juta) yang dikhaskan untuk pengusaha pelancongan memajukan bidang pelancongan (tourism industry), memandangkan perniagaan

Plaintif yang mengusahakan pusat pelancongan di Pulau Perhentian. Malangnya oleh kerana laporan kredit CTOS Plaintif yang tidak memuaskan, Plaintif dinasihatkan oleh pegawai bank untuk membersihkan rekod tersebut terlebih dahulu.

[69] The plaintiff claimed that her creditworthiness amongst financial institutions had been affected by the fact that the defendant had given her a low credit score in the defendant's database and plaintiff's credit reports, consequence of which she was unsuccessful in obtaining a loan due to the defendant's reports ie to purchase any new vehicle via a hire purchase loan and to take the opportunity to expand the business on the Perhentian Island.

[70] Notwithstanding, even assuming that there was an implied reference to it, we find that there was no breach of any statutory duty at all. There was also no connection proven between the rejection of her car loan application and the contents of the credit report. Furthermore, the plaintiff had also admitted in cross-examination that there was no evidence of any rejection by banks of facilities having been applied. This can be seen from the oral evidence given by her in court.

(See pa 94 encl 4 Volume B of the Record of Appeal):

PD: Bagi tujuan rekod ini adalah penting, okay. Pinjaman yang kamu katakan telah ditolak kalau benar atas dasar CTOS repot adalah di antara Januari dan April iaitu SME Bank, okay dan selepas itu, pada bulan Jun or Julai Bank Muamalat, betul?

SP1: Tidak setuju. SME Bank sepanjang tahun 2019. PD: Okay, SME Bank sepanjang bulan?

SP1: Sepanjang tahun 2019.

PD: Okay. Tolong rujuk Mahkamah kepada mana-mana dokumen sebarang dokumen yang boleh menyokong penyataan kamu?

SP1: Tiada.

(See page 97 encl 4 Volume B of the Record of Appeal):

PD: Ya, that's the thing. Okay. Now, Puan Suriati, adakah kamu mempunyai surat daripada mana-mana bank atau mana-mana financial institution yang menyatakan kepada kamu bahawa pembiayaan ditolak oleh kerana CTOS score kamu?

SP1: Saya dimaklumkan, tiada dokumen.

[71] Based on the testimony above, it is patently clear that the defendant had not breached its duty of care to the plaintiff in all circumstances.

[72] We appreciate that 'credit reporting' as defined under the Credit Reporting Agencies Act 2010 would include credit information that has any bearing on the eligibility of a customer to any credit. That would entail a reporting which some credit reporting agencies would do by way of a credit score. Here the credit score is calculated by a software using algorithms and bereft of human intervention and there is no evidence to show that the rejection of the car loan was premised on a low credit score.

CONCLUSION

[73] Having appraised ourselves of the relevant documentary evidence before us, the oral and written submission made by the learned counsels, we unanimously find that there was misdirection on the part of the learned High Court judge that warrants appellate intervention.

[74] We find merits in the appeal and we are satisfied that the trial judge had been plainly wrong in his analysis of the evidence and in his failure to appreciate the evidence before him that led to his erroneous finding of liability. The appeal is allowed and the order of the High Court is set aside. We also find no merit in the respondent/plaintiff cross-appeal in encl 18 and similarly dismiss encl 18. We order costs of RM65,000 here and below to the appellant/defendant subject to the allocator.

Enclosure 11 allowed, order of High Court set aside, encl 18 dismissed with costs of RM65,000 here and below to appellant subject to allocator.

Reported by Dzulqarnain Ab Fatar